

The opinion in support of the decision being entered
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. PERREGO

Appeal 2007-2294
Application 09/740,169
Technology Center 3700

Decided: September 11, 2007

Before DEMETRA J. MILLS, LORA M. GREEN, and RICHARD M.
LEBOVITZ, *Administrative Patent Judges*.

GREEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the
Examiner's final rejection of claims 1-15.¹ We have jurisdiction under 35

¹ The Amendment after Final Action, dated October 15, 2003, was entered after petition (Answer 2), thus the claims on Appeal may be found in Appendix B of the Appeal Brief (Reply Br. 1).

U.S.C. § 6(b). Claims 1, 9, and 10 are representative of the claims on appeal, and read as follows:

1. A vertical traction assembly for using gravity to stretch a person's spine, said assembly comprising:
 - a) standing frame means and torso harness means coupled to depend downwardly from said frame means,
 - b) said harness means being effective to maintain a person in a vertical traction suspension position after the person dons said harness means, and
 - c) traction force focusing means attached to the frame means for applying a focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position.
9. A vertical traction assembly for using gravity to stretch a person's spine, said assembly comprising:
 - a) standing frame means and torso harness means coupled to flexibly depend downwardly from said frame means, and
 - b) said frame means including a first non-traction receiving surface means for supporting a person while standing to don the torso harness means and a second partial traction receiving surface means for supporting a person while standing to adjust said harness means with respect to the person's torso and assembly before the person voluntarily steps to a vertical, gravity traction suspension position,
 - c) said harness means being effective to suspend the person from the frame means for a partial traction pressure when the person stands on said second partial traction receiving surface means after donning said harness means,
 - d) said partial traction pressure being less than a full traction pressure that is applied to the person while in said vertical, gravity traction suspension position.
10. A traction assembly for using gravity to stretch a person's spine, said assembly comprising:
 - a) freestanding frame means and harness means effective to releasably gird the torso of a person,
 - b) said harness means being coupled to flexibly depend downwardly from said frame means to suspend the person from the frame means in a vertical traction suspension position, and

c) focused traction force means adjustably connected to the frame means for applying traction pressure directly to a selected location along the spine of the person in said vertical traction suspension position.

The Examiner relies on the following references:

Burton	US 4,205,665	Jun. 3, 1980
Nelson	US 4,890,604	Jan. 2, 1990
Chitwood	US 5,662,597	Sep. 2, 1997

We reverse.

DISCUSSION

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Chitwood.

Chitwood is cited for teaching a gravity traction assembly, shown in Figure 1 of Chitwood, comprising a standing frame means and a torso harness means coupled to depend downwardly from the frame means, with the torso harness means being effective to maintain a person in vertical traction suspension, and traction focusing means attached to the frame for applying a predetermined amount of focused traction pressure directly to the cervical region of the spine (Answer 4). According to the Examiner, Figures 1 and 2 of Chitwood “clearly show an adjustable inclined table . . . that can be inclined at [an] angle of 80 degrees . . . , which would appear to be more vertical than Appellant's inclined table. The harness means of Chitwood would appear to place the user in an effective vertical traction suspension position by gravitational force.” (*Id.*)

Appellant argues that Chitwood does not disclose a harness means effective to maintain a person in a vertical traction suspension position as required by claim 1 (Appeal Br. 11). Specifically, Appellant asserts that in

the assembly of Chitwood, “[t]he person does not hang in a vertical disposition that is perpendicular to the plane of the horizontal surface supporting his traction assembly. That is, a person merely reclining on the inclined Chitwood table 12 is not suspended as Applicant discloses and claims.” (*Id.*) We agree, and the rejection is reversed.

In order for a prior art reference to be anticipatory, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001).

The limitation of the claim that “said harness means being effective to maintain a person in a vertical traction suspension position after the person dons said harness means” is written as “means-plus-function.” *Sage Prods. Inc. v. Devon Indus., Inc.*, 126 F.3d 1420, 1427, 44 USPQ2d 1103, 1109 (Fed. Cir. 1997)(The use of the term “means” raises a presumption that the means-plus-function limitation is intended). A means-plus-function limitation must be interpreted as the corresponding structure described in the Specification and equivalents thereof consistent with 35 U.S.C. § 112, 6th paragraph. *See, e.g., In re Donaldson*, 16 F.3d 1189, 1193, 29 USPQ2d 1845, 1848 (Fed. Cir. 1994)(*in banc*).²

² 37 C.F.R. § 41.37(c)(v) (2004) requires that “every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.” The rule was effective September 13, 2004, after the filing date of the instant brief. 69 Fed. Reg. 49960 (August 12, 2004).

In the Reply Brief, Appellant points to Figure 8 of the instant disclosure, which shows “a patient in a ‘vertical traction suspension position’ when held by the torso harness 35 and pad element 25 (the traction force focusing means attached to the frame means) applies a ‘focused traction pressure directly to a selected location along the spine of the person who is in said vertical traction suspension position.’” (Reply Br. 4.) Moreover, the Specification teaches that the “torso harness means is coupled to flexibly depend from the frame structure to suspend the person from the frame structure in a vertical, gravity traction position.” (Specification 7.) In addition, the “patient’s lower body freely suspends from the frame structure to allow for subtle side-to-side shifts in the patient’s weight” (*Id.* at 8.)

We thus interpret “said harness means being effective to maintain a person in a vertical traction suspension position after the person dons said harness means” consistent with the structure as shown in Figure 8 that allows for a vertical traction suspension position and allows the lower body to freely suspend from the frame structure. Based on that interpretation, we agree with Appellant that the Chitwood apparatus, wherein a patient is merely reclining on the inclined table does not meet that limitation, and the rejection is reversed.

Claim 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Burton.

Burton is cited for teaching an apparatus for spinal traction therapy utilizing the force of gravity, shown in Figure 2 of Burton (Answer 5). The apparatus comprises a standing frame means and a torso harness means coupled to depend downwardly from the frame means, wherein the frame

means has a foot stop having a first surface means and a second surface means, wherein both surfaces can support a patient while they don the harness (*id.*). According to the Examiner, the harness of Burton is effective to suspend a person for a partial traction pressure when standing on the second surface, which is less than full traction pressure applied to a patient while in the vertical gravity traction suspension position (*id.*).

Appellant argues that the frame of Burton is a “not a standing structure” as required by claim 9, as the frame of Burton is a rotating frame (Appeal Br. 12). We agree, and the rejection is reversed.

The Examiner asserts that Figure 2 of Burton shows the frame, which may include a rotating portion, is also a standing structure. Claim 9 requires “standing frame means and torso harness means coupled to flexibly depend downwardly from said frame means.” In Figure 2 of Burton, the torso harness is coupled to a bar attached to two circular hoops (col. 4, ll. 55-57) that rest on rollers driven by a drive motor (col. 5, l. 4), and thus the harness is not coupled to a standing frame but to rings that rotate around a center. Burton therefore does not teach all of the limitations of claim 9, and the rejection is reversed.

Claims 1, 7, and 10-14 stand rejected under 35 U.S.C. § 103(a) as being obvious over Nelson.

Nelson is cited for teaching a gravity traction assembly (Nelson, Figure 7) comprising a free stand frame means, focused traction force means attached to or adjustably connected to the frame means for applying a predetermined amount of focused traction pressure directly to a selected location along a user’s spine (Answer 6). According to the Examiner, Nelson “does not include torso harness means coupled to flexibly depend

downwardly from the frame means,” but argues that “Nelson suggests that a body strap (torso harness means) can be used if necessary and desirable (col. 7, lines 16-18)” and that “the torso harness means being effective to maintain a person in gravity traction suspension position.” (*Id.*) The Examiner concludes “[t]herefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify . . . Nelson’s apparatus, as suggested above, to include a torso harness means coupled to the frame means, for the purpose of securing the user relatively to the frame means . . . if necessary or desirable.” (*Id.*)

“In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. Only if that burden is met, does the burden of coming forward with evidence or argument shift to the applicant.” *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) (citations omitted). In order to determine whether a prima facie case of obviousness has been established, we considered the factors set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1996); (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; (3) the level of ordinary skill in the relevant art; and (4) objective evidence of nonobviousness, if present.

Appellant argues that in Nelson, the body strap does not depend downwardly from the table but extends upwardly from it (Appeal Br. 16). We agree, and as the Examiner does not provide reasons or argument as to how Nelson renders obvious “torso harness means coupled to depend downwardly from the frame means,” as required by independent claim 1, “torso harness means coupled to flexibly depend downwardly from said frame means,” as required by independent claim 9, or “harness means being

coupled to flexibly depend downwardly from said frame means,” as required by claim 10, the Examiner has not met the burden of establishing a prima facie case of obviousness, and the rejection is reversed.

Moreover, independent claims 1, 9, and 10 all require a harness means to maintain a person in vertical traction suspension. As noted above with respect to the rejection over Chitwood, that limitation has been interpreted as being consistent with the structure as shown in Figure 8, which allows for a vertical traction suspension position and allows the lower body to freely suspend from the frame structure. Nelson teaches restraint means are connected to the frame at the head and ankles or feet in order to restrain movement relative to the frame (col. 1, ll. 41), to which a body strap may also be added (col. 7, ll. 16-17). Thus, Nelson also does not render obvious a harness means to maintain a person in vertical traction suspension.

Claims 2-6, 8, and 15 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Nelson and Burton.

As Burton does not remedy the deficiencies of Nelson, the rejection is reversed for the reasons set forth above.

REVERSED

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